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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

USRP (SUSI), LLC, A TEXAS LIMITED LIABILITY COMPANY, Plaintiff and Respondent, v. FINN MOLLER, Defendant and Appellant.	2d Civil No. B163547 (Super. Ct. No. CIV 203620) (Ventura County)

Finn Moller appeals from the judgment entered in favor of USRP (SUSI), LLC, respondent, following a court trial. The trial court determined that appellant had converted respondent's property. Appellant contends that the trial court erred because, as a matter of law, respondent did not own the property. Appellant also contends that the trial court erred in failing to resolve material issues in its statement of decision. We affirm.

Facts And Procedural Background

Summit Energy Corporation (hereafter Summit) sold land in Fillmore to respondent. Respondent leased the land back to Summit. The lease required Summit to construct a convenience store and gasoline service station on the land. Respondent agreed to reimburse Summit for construction costs not to exceed $1,180,000.

Appellant's two children were the sole shareholders of Summit. Appellant testified that he was an "advisor" to Summit and was neither a director nor an officer. However, on numerous occasions he had represented himself to be a director of the corporation. Martin Zaldo, a consultant to Summit, testified that appellant was "the person in charge of operating the company[.]"

In three payments, respondent reimbursed Summit for construction costs totaling $1,180,000. Each payment was for specific items listed on invoices submitted by Summit to respondent. The invoices showed the price that Summit had paid for each item.

The reimbursement did not cover all of the construction costs. Zaldo testified that the cost of the improvements was approximately $1,500,000 or $1,600,000.

In April 2001 respondent filed an unlawful detainer action because Summit had defaulted under the lease. Judgment was entered awarding respondent recovery of possession of the premises.

After entry of the judgment and before Summit vacated the premises, appellant removed fixtures and equipment specified in the invoices paid by respondent. The removed property included six gasoline dispensers, a complete vapor recovery assist system, a monitoring system, and part of an automatic door.

Respondent filed a complaint against Summit, appellant, and an insurer. The complaint alleged seven causes of action, one of which was for conversion of the fixtures and equipment removed from the premises.

In its statement of decision, the trial court found that respondent owned the fixtures and equipment specified in the invoices that it had paid: "It is clear from the evidence that part of what [] Summit was billing [respondent] for in the development stage included all of the fixtures for which [respondent] now seeks recovery. . . . [Respondent] was paying for this equipment, and as such, assumed title to it." The trial court concluded that appellant's removal of the property "amounts to an

interference with [respondent's] ownership rights, and is a conversion." It awarded respondent damages of $172,941.75.

Elements Of Conversion

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. Conversion is a strict liability tort. The foundation of the action rests neither in the knowledge nor the intent of the defendant. Instead, the tort consists in the breach of an absolute duty; the act of conversion itself is tortious. Therefore, questions of the defendant's good faith, lack of knowledge, and motive are ordinarily immaterial. [Citations.]" (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1065.)

Respondent Owned The Property Converted By Appellant

Appellant contends that ownership of the removed property is determined by the terms of the lease. He argues that, under sections 1.2 and 8.1(a) of the lease, respondent did not own any of the removed property. Section 1.2 defines "Personal Property" as "[t]he furniture, fixtures and equipment owned by Landlord and used by Tenant at the Premises, more particularly described on Exhibit B." Section 8.1(a) provides in part: "Tenant shall order and take delivery of items of furniture, fixtures and equipment set forth on Exhibit B hereto." Exhibit B, however, was left blank. Appellant asserts: "[T]his court must now interpret the Lease as it reads. This interpretation must find that, under the Lease, [respondent] was to own only the personal property identified on Exhibit B, that no property was identified on Exhibit B and that, therefore, [respondent] owned no personal property."

"Since there is no conflict in the extrinsic evidence in the present case we must make an independent determination of the meaning of the contract." (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866.) "The fundamental canon of interpreting written instruments is the ascertainment of the intent of the parties.

[Citations] As a rule, the language of an instrument must govern its interpretation if the language is clear and explicit. [Citation.] A court must view the language in light of the instrument as a whole and not use a 'disjointed, single-paragraph, strict construction approach[.]' [Citation.] If possible, the court should give effect to every provision. [Citations.] An interpretation which renders part of the instrument to be surplusage should be avoided. [Citations.]" (*Ticor Title Ins. Co. v. Rancho Santa Fe Assn.* (1986) 177 Cal.App.3d 726, 730.)

The mere fact that Exhibit B was left blank does not show that respondent owned no personal property. The parties clearly contemplated that respondent would own personal property. Section 18.20 of the lease provided for the rental of respondent's personal property to appellant: "[A]n amount equal to fourteen percent (14.00%) of the Base Rent shall be allocated to the lease of the Personal Property." The section established safeguards to assure that respondent's personal property would be protected: "Tenant shall keep the Personal Property in good working order and repair . . ., shall not remove the Personal Property from the premises and shall not permit any lien or other encumbrance to attach to the Personal Property. Tenant shall keep the Personal Property insured and shall be responsible for any casualty or other loss to the Personal Property or occasioned by the Personal Property. Tenant shall at all times have a system in place to identify the Personal Property from any trade fixtures or equipment of Tenant, and any items of Personal Property not so identified shall conclusively be presumed to be the property of Landlord. At the expiration of the Term of the Lease, Tenant shall return all Personal Property to Landlord."

If we were to interpret the lease as providing that respondent would own no personal property, then all of the lease provisions concerning respondent's personal property would be surplusage. Since 14 percent of the base rent was allocated to appellant's lease of the personal property, the parties necessarily intended that respondent would own personal property of significant value.

Viewing the lease as a whole and giving effect to every provision, we conclude that the parties intended that respondent would own the personal property specified in the invoices that it paid. Section 8.1(a) provided that, prior to each payment by respondent of the construction costs, appellant shall furnish a "Tenant's certificate" showing the "purchase price of the Personal Property . . . ." Section 8.1(a) further provided: "Upon the final payment, Tenant shall convey the Personal Property to Landlord by bill of sale."

Furthermore, we reject appellant's interpretation of the lease because it would lead to an absurd result. "The interpretation must be fair and reasonable, not leading to absurd conclusions. [Citation.]" (*Transamerica Ins. Co. v. Sayble* (1987) 193 Cal.App.3d 1562, 1566.) It would be absurd to conclude that, if Summit defaulted and were evicted, the parties intended to allow Summit to render the gasoline station inoperable by removing fixtures and equipment paid for by respondent.

Since respondent owned the fixtures and equipment specified in the invoices that it had paid, appellant was properly held liable for the conversion of this property.

Appellant Waived His Claim That The Statement of Decision Is Deficient

Appellant claims that the statement of decision is deficient because the trial court failed to make any findings "with respect to ownership of the property under the terms of [the] Lease . . . ." Although appellant objected to the intended statement of decision, he did not object on this ground. The claimed deficiency, therefore, is waived. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134.)

In any event, the statement of decision is not deficient. It adequately explains "the factual and legal basis for [the trial court's] decision" that respondent owned the equipment and fixtures removed by appellant. (Code Civ. Proc., § 632.)

Even if the statement of decision were deficient, the error would be harmless in view of our independent construction of the lease. (See *Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230.)

Disposition

The judgment is affirmed. Costs on appeal are awarded to respondent.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

Henry J.Walsh, Judge

Superior Court County of Ventura

Ferguson, Case, Orr, Paterson & Cunningham; David W. Tredway and Sandra M. Robertson, for Appellant.

Coontz & Matthews; M. Stephen Coontz, for Respondent.